

FILED
DISTRICT COURT OF GUAM
OCT 07 2003
MARY L. M. MORAN
CLERK OF COURT

1 **Tony H. Ashtiani**
2 P.O.Box 12723
3 Tamuning Guam 96931
4 671-688-4844
5 671-653-5575

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UNITED STATES DISTRICT COURT

DISTRICT OF GUAM

Tony H. Ashtiani,

Plaintiff,

Vs.

Continental Micronesia Inc,

Dba, Continental Micronesia,

Continental Airlines,

Defendant.

Civil Case No.: 02-00032

DECLARATION OF TONY H. ASHTIANI
IN SUPPORT OF MOTION TO COMPEL.

Local rule 37.1 (b)

I am plaintiff, Tony H. Ashtiani in the above-entitled action. I declare under the penalty of perjury of the untied states laws that STIPULATION GOVERNING TO COMPEL DISCOVERY (attached with cover letter) was prepared in order to comply with local rule 37.1(b) to the best of my ability as I understood them. **EXHIBIT A**

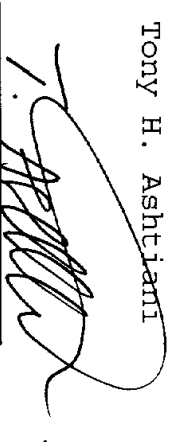
I hand delivered above-mentioned documents to law firm of CARLSMITH BALL at 1:09 P.M On October 06, 2003. The same afternoon at 2:00 P.M I received a call from CARLSMITH BALL and

1 Attorney Ms. Elyze McDonald ESQ,. Stated to me that she will not
2 be able to respond to Stipulation by October 07, 2003 by noon.
3 As she has not been able to look at the stipulation, I reminded
4 attorney Ms. McDonald that it is ORDERED by the Honorable Chief
5 Judge that Discovery motion cutoff date is on October 8, 2003.
6 ORDERED by the Court. Defendant did contact plaintiff on October
7 7, 2003 and was told to pick up some documents. Defendant has
8 stated that Stipulation is not in compliance of rule 37.1 (b)
9 and defendant has not been given enough time while plaintiff has
10 attempted to resolve this issue since July 23, 2003. EXHIBIT B.
11 Plaintiff on numerous occasions both by telephone "Meet and
12 Confer" and by writing attempted to receive documents in
13 reference to statistics and this issue has not been resolved.

14
15 This 7th day of October 2003.

16
17 Submitted Respectfully,

18
19 Tony H. Ashtiani

20
21 
22

23 Plaintiff
24
25

Tony H. Ashtiani
P.O. Box 12723
Tamuning Guam 96931
TEL/FAX 1-(671) 653-5575
CELL 1-(671) 688-4844

Via: Hand Delivery

October 6, 2003.

CARLSMITH BALL LLP
Ms. Elyze McDonald
Bank of Hawaii Bldg., Suite 401
134 West Soledad Avenue
Hagatna, Guam 96932-5027

Re: LR 37.1(b) Stipulation
Tony H. Ashtiani Vs. Continental Micronesia Inc,

In District Court of Guam CV. 02-00032

Dear Attorneys Ms. Elyze McDonald and Mr. David Ledger.

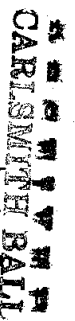
Enclosed, my points and authorities regarding the disputed discovery in my motion to compel, for inclusion in the Stipulation

I respectfully request that stipulation prepared by the plaintiff to be responded by the defendant, Plaintiff is open to any suggestion and ideas which you may have, although it is my intend to file discovery motion on October 07, 2003. Prior to closing day at the District Court Clerk's Office, Please provide defendant's response no later than 12:00 noon of above-mentioned day.

Very Truly Yours

2

Tony H. Ashtiani


Date: 10/6/03
By: EM

UNITED STATES DISTRICT COURT

Tony H. Ashtiani,

Civil Case No.: 02-00032

Continental Micronesia Inc,
Dba, Continental Micronesia,

**STIPULATION GOVERNING
TO COMPEL DISCOVERY.**

Local rule 37.1 (b)

Enclosed my points and authorities regarding the disputed discovery in my motion to compel, for inclusion in the stipulation

That which is relevant would also be material. Thus, the two are grouped together.

California, 511 F.2d 192, 196(9th Cir. 1975), *aff'd*, 426 U.S.

HEITHAV CARLSMITH PAINT

By: EM

1
2 The question of relevancy is to be more
3 loosely construed at the discovery stage
4 than at the trial. Under F.R.C.P. 26(b) (1)
5 it is no ground for objection that
6 information sought in pretrial discovery
7 would not be admissible at trial if the
8 testimony sought appears reasonably
9 calculated to lead to the discovery
10 of admissible evidence.

11
12 As further stated in Jones v. Commander, Kansas Army
13 Ammunitions plant, 147 F.R.D. 248, 250 (D.KAN.1993) emphasis
14 added) :

15 Relevancy has been defined as encompassing any
16 matter that bears on, or that reasonably could
17 lead to other matters that could bear on, any
18 issue that or may be in the case. Discovery is
19 not limited to issues by pleadings, for discovery
20 itself is designed to help define and clarify the
21 issues. . . . A request for discovery should be
22 considered relevant if there is any possibility that
23 the information sought may be relevant to
24 the subject matter of the action. Discovery
25 should ordinarily be allowed under the concept
of relevancy unless it is clear that the information
sought can have no possible bearing upon the
subject matter of the action. (Citations omitted;
emphasis added.)

26
27 "Information is regarded as 'relevant to the subject
28 matter' if it might reasonably assist a party in evaluating the
29 case, preparing for trial, or facilitating settlement thereof. .
30 . . . " CERAMIC Corp. Of America V. Inka Maritime Corp., 163
31 F.R.D 584,587 (C.D.CAL. 1995) (emphasis in original).

1 Document requests 13,24,32, and 35 are relevant because
2 Ashtiani intends to rely on them to compile statistical evidence
3 indicating that CMI's pervasively discriminates against
4 minorities, including plaintiff, through its disparate treatment
5 policies against pacific islanders and local hires. Thus, for
6 instance, in order to meet his burden plaintiff could show,
7 through circumstantial, statistical or direct evidence that the
8 discharge occurred under circumstances giving rise to an
9 inference of discrimination. Wallis v. J.R. Simplot Co., 26 F.3d
10 885, 891 (9th Cir.1994). He can meet his burden by showing that
11 defendant had a continuing need for his skills and services in
12 his various duties. Id.

13
14 Plaintiff could also establish a prima facie case of
15 discrimination by offering direct evidence of defendant's
16 discriminatory motives. See, Schmidrig v. Columbia Mach., Inc.,
17 80 F.3d 1406, 1409-10 (9th Cir.1996).

18
19 Document requests 3,4,6,7,8,9, and, 36 are relevant
20 because Ashtaini may relay on them as direct or circumstantial
21 evidence of either intentional discrimination and that hiring,
22 firing, and employment evaluation practices have a desperate
23 impact including Ashtiani.

1 Document Requests 13,24,32,and 35 are directly relevant as
2 they refer to investigations of national origin discrimination
3 and harassment, respectively.

4
5 Document Request 7,8 in the First Request are relevant
6 because it is clear from the course of discovery to date that
7 CMI intends to place in issue Defendant Ashiani's attendance
8 reports level 1 thru 6 which does not even exist. CMI plans to
9 argue that these manufactured reports are valid and trade days
10 are accountable attendance.

11
12 **2. overly broad**
13

14 As you can ascertain from the requests themselves and the
15 analysis above, the requests are tailored to solicit well-
16 defined information. Document requests 3,4,13,24,32 and 35, are
17 relevant because Ashiani intends to rely on them to compile
18 statistical evidence indicating that CMI's pervasively
19 discriminates against minorities, including plaintiff, through
20 its disparate treatment policies against pacific islanders and
21 local hires. Thus, for instance, in order to meet his burden
22 plaintiff could show, through circumstantial, statistical or
23 direct evidence that the discharge occurred under circumstances
24 giving rise to an inference of discrimination. In Rich v.
25 Martin Marietta Corp., 522 F.2d 333, 343, (10th Cir. 1975) the

1 court of appeals held that the district court erred in denying
2 plaintiffs the right to discover information and statistics
3 withheld by the defendant regarding hiring, firing promotion and
4 demotion of Blacks, Hispanics and women on a plant-wide basis
5 and within individual departments. Id. at 344-345.

6 7 3. Unduly Burdensome

8
9 Plaintiff's requests are not unduly burdensome. They are
10 drafted with precision, in order to provide plaintiff with the
11 requisite database from which he can ascertain relevant
12 information. See, Par. 1, above. It is rather obvious that
13 defendant simply dumps any conceivable objection into his
14 pleading in response, simply in order to block plaintiff from
15 securing the necessary information in order to present his case
16 at trial.

17 18 4. Privacy Concerns

19
20 It clearly appears that defendant does not have standing to
21 assert an objection, which belongs to another, who has raised no
22 objection himself. Plaintiff also asserts that if a privacy
23 legitimate concern of the defendant.
24
25

PLAINTIFF'S MOTION TO COMPEL

REQUEST NO. 3:Copy of all (a) P-160s (b) P-187 of Mr. Dixon McKenzie, Human Resources Dire Copy of all (a) P-160s (b) P-187 of Mr. James Hammer director of maintenance.

RESPONSE: Objection is being made as to the requested material being irrelevant, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this request because it seeks information, which is confidential, private and personal, and the disclosure of it would necessarily invade the privacy, and expectation of privacy, or person not parties to this suite.

REQUEST NO. 4:Copy of all (a) P-160s (b) P-187 of Mr. James Hammer director of maintenance.

RESPONSE: Objection is being made as to the requested material being irrelevant, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this request because it seeks information, which is confidential, private and personal,

1 and the disclosure of it would necessarily invade the privacy,
2 and expectation of privacy, or person not parties to this suite.

3
4 **REQUEST NO. 6:** Copy of the return receipt of the U.S.P.S
5 certified letter (PS form 3811) signed by the plaintiff on July
6 12, 2001 which contained plaintiff's termination letter dated
7 July 03, 2001 signed by Mr. Herrera.

8
9 **RESPONSE:** A diligent search and reasonable inquiry has been made
10 in an effort to locate the item requested. However, Defendant is
11 unable to comply as it does not have in its control or
12 possession a copy of the return receipt of the U.S.P.S certified
13 letter (PS form 3811) signed by the plaintiff on JULY 12, 2001
14 which contained plaintiff termination letter dated July 03, 2001
15 signed by Mr. Herrera.

16
17 **REQUEST NO. 7:** (a) All document of 1 thru 6 levels of attendance
18 records and counseling notice of which were received by
19 plaintiff; (b) list of witnesses and attendees whom were present
20 at such meetings, including employer's representative,
21 employees, and union representative; and (c) the jointly filled
22 out discussion form(s) (which, at the end of each such meeting
23 all parties acknowledged such meeting and signed the mentioned
24 form).
25

1 **RESPONSE:** (a) If these documents exist and appear to be
2 discoverable in this action, they will be produced; (b)
3 Defendant is unable to comply as it does not have in its
4 possession a list of witnesses and attendees whom were present
5 at such meetings, including employer's representative, employees
6 and union representative; and (C) Objection is being made to
7 vagueness.

8 **REQUEST NO.8:** Documents of plaintiff's employee evaluation
9 and/or progress reports from defendant's Technical Services
10 Division, where plaintiff worked and employer provided this form
11 during evaluation as plaintiff had acknowledged and signed of
12 employer expectation from the plaintiff (referred to therein as,
13 "employee").

14 **RESPONSE:** If these items can be obtained and are discoverable in
15 this action, they will be produced.

16 **REQUEST NO.9:** Please provide dates [??] in regard to each and
17 every DC-10-30 exiting the fleets of Continental Micronesia
18 inc.,

19 **RESPONSE:** Objection is being made as to relevancy.

20 **REQUEST NO.13:** Please provide a list of names of all mechanics,
21 mechanic helpers, Airframe mechanics, sheet metal mechanics,
22 sheet metal mechanic helpers, tool crib attendants either in the
23 Technical Services Division of terminal line or B CHECK that
24 were under the union contract of Continental Micronesia Inc, and
25 International Brotherhood of Teamsters who were employed by the
defendant who had two or more consecutive No call/No show from
the period from Jun 1990 to the present.

1
2 **RESPONSE:** Objection is being made as to the requested material
3 being irrelevant, overly broad, unduly burdensome and not
4 reasonably calculated to lead to the discovery of admissible
5 evidence. Defendant further objects to this request because it
6 seeks information, which is confidential, private and personal,
7 and the disclosure of it would necessarily invade the privacy,
8 and expectation of privacy, or person not parties to this suite.

9
10 **REQUEST NO. 24:** All documents referring or relating to Mr. Dixon
11 McKenzie and Mr. James Hammer participation or involvement in
12 decision-making concerning any employee's employment, including,
13 without limitation, decisions relating to salary, promotion,
14 bonuses, hiring layoff or firing.

15
16 **RESPONSE:** objection is being made as to vagueness, over breadth,
17 and burdensomeness. In addition to said objections, Defendant is
18 unable to comply as it has no documents referring or relating to
19 Mr. Dixon McKenzie and Mr. James Hammer participating or
20 involvement in decision- making concerning any employment,
21 including, without limitation, decision relating to salary,
22 promotion, bonuses, hiring, lay off or firing.

23
24 **REQUEST NO. 32:** The P-160's for all defendant's supervisors that
25 were (a) promoted in period of June 1998 to September 11, 2001;
and (b) those supervisor that were furloughed or laid off after
September 11, 2001 up to January 10, 2002. Please provide their
names, their race, nationality, and their ethnicity of all such
individuals who were furloughed in the Technical Services
Division, Maintenance, Quality control and Quality Assurance
Division of Continental Micronesia, Inc.

1
2
3 **RESPONSE:** Objection is being made as to the requested material
4 being irrelevant, overly broad, unduly burdensome and not
5 reasonably calculated to lead to the discovery of admissible
6 evidence. Defendant further objects to this request because it
7 seeks information, which is confidential, private and personal,
8 and the disclosure of it would necessarily invade the privacy,
9 and expectation of privacy, or person not parties to this suite.

10
11 **REQUEST NO. 35:** All documents or computerized surveys which was
12 done by any means, including but not limited to, electronic
13 means and referred to as survey by the maintenance supervisors
14 in Guam of their director Mr. James Hammer. Please provide the
15 copy of the survey from each and every supervisor and identify
which survey belongs to which supervisor.

16 **RESPONSE** Objection is being made as to vagueness, over breadth,
17 relevancy, and burdensomeness.

18 **REQUEST NO 36:** All documents and statement James Hammer in
19 regards to making any racial comments either after September 1,
20 2001 or before September 11, 2001 to any one employed by the
21 defendant before or after Plaintiff's termination in reference
22 to plaintiff.

23 **RESPONSE.** Defendant is unable to comply, as it has no document
24 in its possession responsive to this request.
25

1 SO STIPULATED AND AGREED TO BY:

2
3 Tony H. Ashtinai

4 

5 LAW OFFICES OF CARLSMITH BALL LLP
6 Attorneys for Defendant

7 Plaintiff

8 Mr. David Ledger ESQ.,.

9 DATED THIS 8th day of Oct, 06, 2003

10 DATED THIS _____, 2003

11 Ms. Elyze McDonald ESQ.,.

12 DATED THIS _____, 2003

13

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Tony H. Ashtinai
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Tamuning Guam 96931
1-(671) 653-5575
1-(671) 688-4844

JULY 23, 2003.

CARLSMITH BALL LLP
Ms. Elyze McDonald
Bank of Hawaii Bldg., Suite 401
134 West Soledad Avenue
Hagatna, Guam 96932-5027

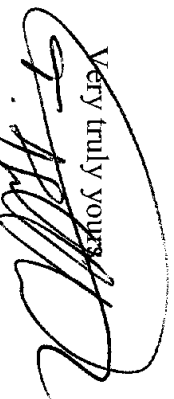
Dear Ms McDonald,

I am presenting this letter to you as a follow up in our telephone conversation on Jul 18, 2003 (Guam Date) as you were in Honolulu office of Carlsmith Ball law firm and before all is said, I hope that you have a pleasant stay in Honolulu. Hawaii.

As you are well aware, On Jun 15, 2003 Plaintiff's Request of First Production of Document within the provision of Fed R. Civ P. Rule 34 was served upon your office, plaintiff received response to above mentioned requests on Jul 15, 2003 and found all responses were objected to and not responsive to all the requests, this is a very rare and thus frivolous, plaintiff is very disappointed, depressed, and stressed by such response.

Plaintiff was also asked to review a bankers box at Carlsmith's conference room, and found all the documents were the files which were suppose to be presented on the initial disclosure and is irrelevant. Plaintiff attempt to contact Mr. Ledger and was told he is in Hawaii as well, However plaintiff was contacted by Ms. June Cruz and was told that more documents are available for review by the end of this week, (July 25, 2003).

Plaintiff respectfully asks that Defendant CMI and attorneys of the record to adhere to Rule 34 and that plaintiff is serving this letter on grounds and basis that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action. Defendant must label all documents (e.g. Exhibit A, B, C, etc.). And indicate in writing which documents are responsive to which requests).

Very truly yours,

Tony H. Ashtinai

RECEIVED
CARLSMITH BALL

Date: 7-23-03

By: 11:34 AM By: STG